

REMARKS

Claims 1, 13 and 20 have been amended to clarify that the methods and kits are directed to detecting the presence of a genetically modified organism in a sample.

Claim 8 has been amended to clarify the language of the claim.

Claims 9, 10 and 13 have been amended to provide proper antecedent basis.

It is submitted that the above amendments are fully supported by the application as filed and do not constitute new matter. Entry of these amendments to the claims is requested.

Claim Objections

The Examiner objected to claim 22 as being of improper dependent form. Since the present application does not contain claim 22 as set forth in the amended claims attached to the IPRP and it is these claims which are properly under examination, Applicant submits that this objection was made in error and should be withdrawn.

Rejection Under 35 U.S.C. § 112, Second Paragraph

The Examiner has rejected claims 1-19 under 35 U.S.C. § 112, second paragraph for being indefinite because of the language “the sample DNA” in claim 1 and “substantially simultaneously” in claim 6. Since present claims 1 and 6, as set forth in the amended claims attached to the IPRP, do not contain the language noted by the Examiner, Applicant submits that this rejection was made in error. Withdrawal of this rejection is requested.

Rejection Under 35 U.S.C. § 102(e)

The Examiner has rejected claims 1-18, 11, 12, 14, 15 and 20-22 under 35 U.S.C. § 102(e) as being anticipated by Murray et al. (WO 02/064830). The Examiner contends that Murray et al. discloses a method of identifying the presence of a target nucleic acid in a sample which involves the replication of the target nucleic acid and the detection of the PPi produced by a nucleic acid

polymerase, wherein the detection of PPi is done in a bioluminescence reaction involving ATP sulfurylase and luciferase.

As discussed above, the claims examined by the Examiner in this Office Action are not the claims that have been properly presented for examination on the basis of those claims appended to the IPRP. Thus, the subject matter of the claims is not identical to the subject matter of the claims considered by the Examiner.

The present claims are directed to methods and kits for detecting the presence of a genetically modified organism. Murray et al. does not disclose such methods and kits. Thus, Murray et al. does not anticipate the claimed subject matter.

In view of the above amendments and remarks, Applicant submits that the claimed subject matter is not anticipated by Murray et al. Withdrawal of this rejection is requested.

Rejection Under 35 U.S.C. § 103(a)

The Examiner has rejected claims 9, 10 and 13 under 35 U.S.C. § 103(a) as being obvious over Murray et al. in view of Nyren et al. (US 6,258,568). The Examiner cited Nyren et al. for disclosing immobilization of DNA or primers on a solid support, use of an exonuclease deficient high fidelity polymerase and a bioluminescence assay.

Nyren et al. is directed to a method for identifying a base at a target position in a sample DNA sequence. As with Murray et al., Nyren et al. does not disclose methods and kits for detecting the presence of a genetically modified organism. Thus, Nyren et al. does not cure the deficiencies of Murray et al. Therefore, Murray et al. and Nyren et al. does not render the claimed subject matter obvious.

In view of the above amendments and remarks, Applicant submits that the claimed subject matter is not obvious over Murray et al. and Nyren et al. Withdrawal of this rejection is requested.

Rejection Under 35 U.S.C. § 103(a)

The Examiner has rejected claims 16-19 under 35 U.S.C. § 103(a) as being obvious over Murray et al. in view of Segev et al. (US WO 96/34984). The Examiner cited Segev et al. for disclosing the desire to detect non-native pathogens in, for example, plants.

Segev et al. is directed to a method for amplifying and detecting the presence of a single stranded nucleic acid in a sample. As with Murray et al., Segev et al. does not disclose methods and kits for detecting the presence of a genetically modified organism. Thus, Segev et al. does not cure the deficiencies of Murray et al. Therefore, Murray et al. and Segev et al. does not render the claimed subject matter obvious.

In view of the above amendments and remarks, Applicant submits that the claimed subject matter is not obvious over Murray et al. and Segev et al. Withdrawal of this rejection is requested.

Conclusion

In view of the above amendments and remarks, it is submitted that the present claims satisfy the requirements of the patent statutes and are patentable over the prior art. Reconsideration and early notice of allowance are requested. The Examiner is invited to telephone the undersigned in order to expedite prosecution of the present application.

Respectfully submitted,
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